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8 UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
9

10 In Re

Case No. 09-12873

11 Edward Walera  
Lisa Walera

CHAPTER 11

12 Debtors.  
13 \_\_\_\_\_/

Date: October 23, 2009

Time: 10:00 a.m.

Ctrm: 99 South E Street, Santa Rosa

14 MOTION TO DETERMINE VALUE OF CLAIM  
15 SECURED BY LIEN ON PROPERTY AND FOR  
ORDER AVOIDING LIEN  
16 (Circle Bank - Second Deed of Trust)

17 The debtors hereby move pursuant to FRBP Rule 3012 and 11 USC § 506 for an order  
18 determining the extent of the value of the secured claim of Circle Bank or assignor (hereinafter  
19 “Circle”), and for an order pursuant to 11 USC § 1123 avoiding the lien held by Circle. The  
20 motion respectfully represents:

21 **Relief Requested**

22 A determination that the claim of Circle is disallowed as a  
secured claim, and for an order avoiding the Circle lien.

23 **The Motion**

24 1. The debtors are the owners of a single family dwelling, their investment property,  
25 described as 7596 Elphick Road, Sebastopol, CA (APN 076-012-033). The debtors are  
26 informed and believe, based upon sales of comparable properties in the neighborhood, the fair  
27 market value of the property is \$540,000.

28 2. On or about April of 2007, for valuable consideration, the debtors made,

1 executed, and delivered a promissory note to World Savings & Loan. As part of the same  
2 transaction the debtors executed a deed of trust that conveyed a beneficial interest in the Elphick  
3 Road property to World Savings & Loan to secure payment of the note that was duly perfected  
4 with the recording of a deed of trust (the First Deed of Trust). The debtors are informed and  
5 believe that on the day the petition was filed the obligation to World Savings & Loan had a  
6 principal balance of \$798,895.

7 3. On or about February of 2006 for valuable consideration the debtors made,  
8 executed, and delivered a promissory note to Circle. As part of the same transaction, the debtors  
9 executed a deed of trust that conveyed a beneficial interest in the Elphick Road property to  
10 Circle to secure payment of the note that was duly perfected on March 2, 2006, with the  
11 recording of a deed of trust, document number 2006-0025124 (the Second Deed of trust). The  
12 debtors are informed and believe that on the day the petition was filed the obligation to Circle  
13 had a principal balance of \$172,692.28.

14 4. There is a lack of equity in the Elphick Road property in that the balance due to  
15 World Savings & Loan (the First Deed of Trust) exceeds the value of the Elphick Road property,  
16 and therefore the court should find the Circle claim (the Second Deed of Trust) to be unsecured  
17 and its lien avoidable upon completion of the debtors' Chapter 11 Plan.

18 WHEREFORE, the debtors pray the court disallow the claim of Circle. (the Second Deed  
19 of Trust) as a secured claim, and for an order avoiding the lien upon completion of their Chapter  
20 11 Plan and the entry of the Chapter 11 discharge.

21 Dated: September 22, 2009

/s/ Michael C. Fallon

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23 Michael C. Fallon  
24 Attorney for Debtors  
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